IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 350 of 2006 (M/B)

Date of decision: 28th March, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 28.3.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 350 of 2006 (M/B)

Akhtar @ Pappu S/o Kalua,
R/o Mohalla Thanasabik,
Kashipur, District Udham Singh Nagar. ……. Petitioner

Versus

1. State of Uttaranchal,
through Home Secretary.
2. Chief Managing Director,
Uttaranchal Power Corporation Ltd.,
Dehradun.
3. Executive Engineer,
Uttaranchal Power Corporation Ltd.,
Kashipur,
District Udham Singh Nagar. …….. Respondents

Mr. Amrish Agarwal & Mr. Sanjeev Kumar, Advocates for the petitioner.
Mr. N.C. Gupta, Standing Counsel for the State of Uttaranchal.
Mr. B.D. Upadhyaya, Advocate for respondents Nos. 2 and 3.

JUDGEMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. M.M. Ghildiyal, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Amrish Agarwal and Mr. Sanjeev Kumar, Advocates for the petitioner.

Mr. N.C. Gupta, Standing Counsel for respondent No. 1.

Mr. B.D. Upadhyaya, Advocate for respondents Nos. 2 and 3.

They are heard.

2. Petitioner Akhtar @ Pappu has filed this writ petition for the following reliefs:

> "I. Issue a writ order or direction in the nature of mandamus commanding the respondents no. 1 & 2 to pay the compensation of Rs. 15,48,000/- to the petitioner on account of death of his son caused by electric shock due to negligence of respondents.
>
> II. Issue any other writ order or direction, which this Hon'ble court may deem fit and proper in the circumstances of the case.
>
> III. Award the cost of the writ petition to the petitioner throughout."

3. The learned counsel for respondents Nos. 2 and 3 placing reliance on the dictum of the Apex Court in the case of **SDO, Grid Corporation of Orissa Ltd. and others Vs. Timudu Oram** reported in **(2005) 6 SCC 156** has raised a preliminary objection about the maintainability of the writ petition.

4. In the case of **SDO, Grid Corporation of Orissa Ltd. and others Vs. Timudu Oram** (supra), the Apex Court, while considering the question of maintainability of a writ petition under Article 226 of the Constitution of India in the matters relating to compensation, observed in para 6 as under:-

> "6. In Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) with which case these appeals were listed for hearing but could not be heard for want of service, this Court took the view that the High Court committed an error in entertaining the writ petitions under Article 226 of the Constitution and were not fit cases for exercising the jurisdiction under Article 226 of the Constitution. It was held that actions in tort and negligence were required to be established initially by the claimants. The mere fact that the wire of electric transmission line belonging to the appellants had snapped and the deceased had come into contact with it and died by itself was not sufficient for awarding compensation. The Court was required to examine as to whether the wire had snapped as a result of any negligence on the part of the appellants, as a result of which the deceased had come in contact with the wire. In view of the defence raised and the denial by the appellants in each of the cases, the appellants deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission line and yet the wires had snapped because of the circumstances beyond their control or unauthorized intervention of third parties. Such disputed questions of fact could not be decided in exercise of jurisdiction under Article 226 of the Constitution. That the High Court could not come to the conclusion that the defence raised by the appellants had been raised only for the sake of it and there was no substance in it. In para 6 it was observed thus: (SCC pp. 301-02)
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> > *6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in*

proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that 'admittedly/prima facie amounted to negligence on the part of the appellants'. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant I had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995."

5. In the present case, too, the factual averments made by the petitioner in regard to the incident are not admitted and for a proper assessment of the compensation to be awarded to the petitioner, leading of evidence in regard to the income of the deceased and the loss suffered by the petitioner would be necessary. Thus, it is apparent that without resolving the disputed questions of fact, the reliefs sought by the petitioner in the writ petition cannot be granted. In the proceedings under Article 226 of the Constitution of India, it is

not permissible to resolve disputed questions of fact, as the same would require leading of evidence by the parties.

6. In this view of the matter, the writ petition is liable to be dismissed.

7. The petitioner, however, shall be at liberty to approach the Civil Court for the redressal of his grievances projected in the writ petition.

8. With the above observation, the writ petition stands disposed of.

(M.M. Ghildiyal, J.) **(Rajeev Gupta, C.J)**
28.03.2006 **28.03.2006**

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